IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7503 OF 2004

Shamanur Sugars Ltd. .. Petitioner.
Vs.
Kirloskar Brothers Ltd. .. Respondent.

Mr.A.P.Kulkarni for the petitioner.

CORAM : D.B.BHOSALE, J.

DATED : 14TH SEPTEMBER, 2004

P.C.:

. Heard Mr.Kulkarni, learned counsel for the petitioner.

2. By the order, impugned in the instant petition, the learned Judge has rejected the application for setting aside "No W.S." order holding that the court cannot grant the time beyond a period of 90 days for filing of the written statement relying upon the judgment of this court reported in **Iridium India Telecom Ltd. Vs. Motorola INC. and Others 2004(1) ALL M.R. 418**.

3. This court, thereafter, considered the provisions of Order 8 Rule 1, 9 and 10 of the CPC in **Shailaja A.Sawant Vs. Sayajirao Ganpatrao Patil**

2004(2) Mh.L.J.419 and has taken a view that the provisions of Order 8 Rule 1 are directory in nature and in a given case the Court has powers to extend time to file written statement. The judgment also records a note of caution in paragraph 31 thereof. One of the Single Judges of this Court had taken different view and as consequence thereof the question was referred to the division bench. The division bench in **Chintaman Sukhdeo Kaklij and Others Vs. Shivaji Bhausaheb Gadhe and Others in Writ Petition No.2847 of 2004** vide its judgments dated 12/13 August, 2004 upheld the view taken by the learned Single Judge in Shailaja Sawant's case. Keeping that in view, in my opinion, the appropriate course would be to direct the learned Judge to consider the application dated 23.3.2004 (Exhibit-B) afresh in the light of the observations made in Shailaja Sawant's case after giving an opportunity of being heard to the parties in the proceedings. Order accordingly. In view of this the impugned order dated 8.4.2004 renders ineffective. With these observations the petition is disposed of.

(D.B.Bhosale, J.)